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Applicants:	Denise J. Nelson et al.	Docket No.:	17,858.1
Serial No.:	10/750,479	T.C./A.U.:	3761
Confirmation No.:	9846	Examiner:	Stephens, Jacqueline F
Filed:	December 31, 2003	Date:	January 11, 2008

For: PACKAGE ENCLOSING A SINGLE DISPOSABLE ABSORBENT ARTICLE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Brief on Appeal (13 pages)

14 Total pages, including this page

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Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Stephens' **Final Rejection** of claims 1-13 and15-28 which was mailed on September 7, 2007.

On November 16, 2007, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on January 16, 2007.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no other related appeals and/or interferences with regard to the present Application.

Status of Claims

Claims 1-13 and 15-28 remain in the application and are the subject of this appeal.

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Status of Amendments

No amendments were filed after the final Office Action mailed September 7, 2007

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a package (200) enclosing a single disposable absorbent article (20) as representatively illustrated, for example, in Figs. 6-16. The package (200) includes a first piece of material (220) and a second piece of material (222), the first piece of material (220) and the second piece of material (222) being operatively associated with one another to enclose the absorbent article (20). See page 11, lines 8-12 and Figs. 13-16. The package (200) has at least one viewing region (208) in at least one of the pieces of material (220, 222). See page 11, lines 13-14 and Figs. 13-16. The absorbent article (20) has a folded configuration, an unfolded configuration, a bodyfacing surface, and a garment facing surface. See page 11, lines 14-15 and Figs. 1-9. The garment facing surface has a graphic (210) disposed on at least a portion thereof. See page 11, lines 16-17 and Fig. 12. The absorbent article (20) is in a folded configuration and enclosed within the package (200) in a manner such that a least a portion of the graphic (210) is situated in the viewing region (208). See page 11, lines 17-19 and Figs. 13-16. The absorbent article (20) has a ratio in the folded configuration to the unfolded configuration of no more than 0.14. See page 13, lines 7-23.

Independent claim 13 is directed to a package (200) enclosing a single disposable absorbent article (20) as representatively illustrated, for example, in Figs. 6-16. The package (200) includes a sheet of material having an interior surface and an exterior surface (206) and at least one viewing region (208). See page 10, lines 35 to page 11, line 1 and Fig. 15. The package (200) is configured to provide an interior space for only one disposable absorbent article (20). See page 11, lines 1-2 and Fig. 15. The single disposable absorbent article (20) has a folded configuration, an unfolded configuration, a bodyfacing surface, and a garment facing surface. See page 11, lines 2-3 and Fig. 15. The garment facing surface has a graphic (210) disposed on at least a portion thereof. See page 11, lines 4-5 and Figs. 12 and 15. The

single disposable absorbent article (20) is in a folded configuration and situated within the interior space of the package (200) in a manner such that at least a portion of the graphic is situated in the viewing region (208). See page 11, lines 5-7 and Fig. 15. The package (200) includes only one interior space, and the interior space is sized to enclose no more disposable absorbent articles than the single disposable absorbent article (20). See page 1, lines 24-26. The absorbent article (20) has a ratio in the folded configuration to the unfolded configuration of no more than 0.15. See page 13, lines 7-23.

Independent claim 18 is directed to a package (200) enclosing a single disposable absorbent article (20) as representatively illustrated, for example, in Figs. 6-16. The package (200) includes a first piece of material (220), a second piece of material (222), and an opening device (194). See page 10, lines 23-26 and Fig. 11A. At least one of the pieces of material (220, 222) has at least one viewing region (208). See page 11, lines 13-14 and Figs. 13-16. The first piece of material (220) and the second piece of material (222) are operatively associated with one another to enclose the absorbent article (20). See page 11, lines 8-12 and Figs. 13-16. One of the pieces of material (220 or 222) is more rigid than the other piece of material (222 or 220). See page 11, lines 12-13. The absorbent article (20) has a folded configuration, an unfolded configuration, a bodyfacing surface, and a garment facing surface. See page 11, lines 14-15 and Figs. 1-9. The garment facing surface has a graphic (210) disposed on at least a portion thereof. See page 11, lines 16-17 and Fig. 12. The absorbent article (20) is in a folded configuration and enclosed within the package (200) in a manner such that at least a portion of the graphic (210) is situated in the viewing region (208). See page 11, lines 17-19 and Figs. 13-16. The package (200) is sized to enclose no more disposable absorbent articles than the single disposable absorbent article (20). See page 1, lines 24-26.

Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1-13 and 15-28 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over U.S. Patent No. 6,318,555 to Kuske et al. (hereinafter "Kuske").

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Argument

Ground 1 – Rejection Of Claims 1-13 and 15-28

Claims 1-13 and 15-28 stand rejected under 35 U.S.C. § 103(a) as being obvious and thus unpatentable over U.S. Patent No. 6,318,555 to Kuske. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

With respect to independent claims 1 and 13, there is no motivation or suggestion in Kuske for one of skill in the art to modify the Kuske disclosure to achieve the claimed invention, and the Examiner has not described any motivation or suggestion outside of Kuske to do so. Kuske and the present application describe completely different ways of reducing at least one dimension of absorbent article. Kuske describes compressing a stack of absorbent articles to decrease the thickness of the stack. See col. 3, line 64 to col. 4, line 10 and Fig. 4. The compression reduces the thickness 68 of the stack of absorbent articles. Although the absorbent articles in Kuske appear to be folded once, no further folding is contemplated by Kuske. Such an article might or might not be folded; the status of folding is irrelevant to the comparison as long as, presumably, the article has the same folds before and after compression. There is no evidence that the width and height dimensions of Kuske's article change appreciably under Kuske's compression. As a result, the ratio between the folded configuration and the unfolded configuration of Kuske's article also does not change appreciably under Kuske's compression. As a result, Kuske does not teach experimenting with the folding of an absorbent article, only compressing the article's thickness.

Contrarily, the present invention claims a reduction in the overall dimension of an absorbent article by folding the absorbent article. The resulting folded article may very well have an increased thickness compared to an unfolded article, which is opposite the effect sought by Kuske. That the folding of the present invention and the compression of Kuske are not equivalent may be further illustrated by examining Fig. 4 in Kuske. Folding each absorbent

article again, such that each article has two folds, would likely nearly double the thickness 68 of the stack, whereas Kuske actually sought to reduce the thickness 68 of the stack by compressing the stack.

The comparison of folded verses unfolded configuration areas in the present application is quite dissimilar from the comparison of compressed verses uncompressed thicknesses in Kuske. There is no way to compare a thickness compression ratio to an area reduction ratio as these are separate and independent physical mechanisms.

The Examiner states that Kuske discusses compressing an absorbent article as the *In re Aller* "general condition" one skilled in the art may optimize through routine experimentation. Because Kuske describes only compressing a stack of articles to make the stack thinner, one skilled in the art may be led to experiment with compressing a stack of articles to make the stack thinner. But that experimentation will not reduce the folded dimensions of the article as required by the claimed invention. There is nothing in Kuske that teaches that any article folding beyond a typical, perfunctory fold is desirable or even possible. Kuske does not teach or suggest the claimed invention to one skilled in the art.

In addition, a position such as the Examiner's appears to be the very position rejected by the court in *In re Antonie* 195 USPQ 6 (CCPA 1977). In particular, the court noted that an assertion that it would always be obvious to one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system is improper "if there is no evidence in the record that the prior art recognized that particular parameter affected the result" (*Id. at 8 (emphasis added)*). Thus, the court made it clear that the recognition of a particular parameter as a subject for optimization must come from the cited reference, in this case Kuske.

Second, the Examiner has not described in any manner how or even if there might be a reasonable expectation of success in modifying Kuske.

Third, all the claim limitations are not taught or suggested by the prior art reference. As stated above, any teachings or suggestions in Kuske are on completely different subject matters from that of the claimed invention.

Therefore, the rejection of independent claims 1 and 13 (as well as their respective

dependent claims) is respectfully requested to be withdrawn.

With respect to claims 2, 3, 5-7, 9, and 18-28, the Examiner recognizes that the Kuske reference does not disclose the rigidity of the walls of the package. However, the Examiner opines that the teaching of Kuske would have been obvious to one of ordinary skill in the art to make such a different rigidity walled package, as set forth in Appellants' application. The Appellants assert that such a reading of Kuske is not proper, that Kuske could not be so modified to obtain the Appellants' invention, and that Kuske presently does not teach the Appellants' subject invention. In particular, turning to Kuske at column 3, line 57 to column 4, line 58, and namely column 4, lines 16-36, it is clear that the packaging material taught in Kuske is a material with a homogenous rigidity. Much differently, the subject application calls for the package being made of a first piece of material and a second piece of material, where one of the pieces of material (i.e., that is the entire piece of material, although it need not have the same rigidity but the entire piece would have a characteristic rigidity) being more rigid than the other piece of material. Thus, for the subject invention, it is the entire piece of material that is more rigid than the other piece of material.

Differently, Kuske only teaches a uniform rigidity for the entire packaging. And while the packaging may have a weakened area 74 to permit access, as noted by the Examiner, such does not speak to the entire piece of material having a different rigidity but rather such just teaches a piece of material having a weakened line in it. Teaching such a multi-rigidity container based on Kuske and the general state of the art is contrary to Kuske. For at least these reasons, claims 2, 3, 5-7, 9, and 18-28 cannot be rendered obvious by Kuske. Thus, the rejection of these claims is respectfully requested to be withdrawn.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

The Commissioner is hereby authorized to charge any prosecutional fees associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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The undersigned may be reached at: (920) 721-8863.

Respectfully submitted,

DENISE J. NELSON ET AL

By _____
Randall W. Fieldhack
Registration No.: 43,611

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Claims Appendix

The claims on appeal are:

1. A package enclosing a single disposable absorbent article, the package comprising a first piece of material and a second piece of material, the first piece of material and the second piece of material being operatively associated with one another to enclose the absorbent article, the package having at least one viewing region in at least one of the pieces of material, the absorbent article having a folded configuration, an unfolded configuration, a bodyfacing surface and a garment facing surface, the garment facing surface having a graphic disposed on at least a portion thereof, the absorbent article being in a folded configuration and enclosed within the package in a manner such that a least a portion of the graphic is situated in the viewing region, and wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.14.

2. The package of claim 1, wherein one of the pieces of material is more rigid than the other piece of material.

3. The package of claim 2, wherein the viewing region is situated in at least a portion of the piece of material that is less rigid.

4. The package of claim 3, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

5. The package of claim 1, wherein the first piece of material is configured to have a depth and the second piece of material is adapted to serve as a lid.

6. The package of claim 5, wherein the second piece of material is more rigid than the first piece of material.

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7. The package of claim 6, wherein the viewing region is situated in at least a portion of the first piece of material.

8. The package of claim 7, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

9. The package of claim 6, wherein the viewing region is situated in at least a portion of the second piece of material.

10. The package of claim 9, wherein the absorbent article has a ratio in the unfolded configuration to the folded configuration of no more than 0.09.

11. The package of claim 4, 8 or 10, wherein the package is vacuum packed.

12. The package of claim 4, 8, or 10, wherein the package has a thickness of no more than 6.35 mm.

13. A package enclosing a single disposable absorbent article, the package comprising a sheet of material having an interior surface and an exterior surface, the sheet of material having at least one viewing region and being configured to provide an interior space for only one disposable absorbent article, the single disposable absorbent article having a folded configuration, an unfolded configuration, a bodyfacing surface and a garment facing surface, the garment facing surface having a graphic disposed on at least a portion thereof, the single disposable absorbent article being in a folded configuration and situated within the interior space of the package in a manner such that at least a portion of the graphic is situated in the viewing region, wherein the package includes only one interior space, wherein the interior space is sized to enclose no more disposable absorbent articles than the single disposable absorbent article, wherein the absorbent article has a ratio in the folded

configuration to the unfolded configuration of no more than 0.15.

15. The package of claim 13, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

16. The package of claim 13, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.07.

17. The package of claim 13, 15 or 16, wherein the package has a thickness of no more than 6.35 mm.

18. A package enclosing a single disposable absorbent article, the package comprising:

a first piece of material, a second piece of material and an opening device;

at least one of the pieces of material having at least one viewing region;

the first piece of material and the second piece of material being operatively associated with one another to enclose the absorbent article, one of the pieces of material being more rigid than the other piece of material;

the absorbent article having a folded configuration, an unfolded configuration, a bodyfacing surface and a garment facing surface, the garment facing surface having a graphic disposed on at least a portion thereof; and

the absorbent article being in a folded configuration and enclosed within the package in a manner such that at least a portion of the graphic is situated in the viewing region, wherein the package is sized to enclose no more disposable absorbent articles than the single disposable absorbent article.

19. The package of claim 18, wherein the viewing region is situated in at least a portion of the piece of material that is less rigid.

20. The package of claim 19, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

21. The package of claim 18, wherein the first piece of material is configured to have a depth and the second piece of material is adapted to serve as a lid.

22. The package of claim 21, wherein the second piece of material is more rigid than the first piece of material.

23. The package of claim 22, wherein the viewing region is situated in at least a portion of the first piece of material.

24. The package of claim 23, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

25. The package of claim 22, wherein the viewing region is situated in at least a portion of the second piece of material.

26. The package of claim 25, wherein the absorbent article has a ratio in the folded configuration to the unfolded configuration of no more than 0.09.

27. The package of claim 20, 24 or 26, wherein the package is vacuum packed.

28. The package of claim 20, 24 or 26, wherein the package has a thickness of no more than 6.35 m.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.